

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MADELINE NEWTON,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. 3:11-01029-AC

**ORDER ADOPTING FINDINGS AND
RECOMENDATIONS**

SIMON, District Judge,

Magistrate Judge John Acosta issued findings and recommendations in the above-captioned case on September 6, 2012. Dkt. 15. Judge Acosta recommended that the Commissioner's decision be reversed and the case be remanded for the immediate calculation and award of benefits. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe a standard of review. In such cases, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Acosta’s findings and recommendations for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Acosta’s findings and recommendations, Dkt. 15, are ADOPTED. Accordingly, the Commissioner’s decision denying Claimant’s application for benefits is reversed and remanded for an award of benefits.

Dated this 28th day of September, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge